

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9181 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

GUJARAT HOUSING BOARD

Versus

GANGABEN HARIBHAI & ORS.

Appearance:

1. Special Civil Application No. 9181 of 1998
MR HS MUNSHAW for Petitioner No. 1
MR GM JOSHI for Respondent No. 1-2,4-10,13-15
RULE SERVED for Respondent No. 3,11-12,16
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/09/2002

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India, though styled as one under Article

226 of the Constitution, and invoking the fundamental rights under Article 14 and 16 of the Constitution

2. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of (i) Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38, (ii) Khalil Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184) and (iii) Ashok Kumar Vs. Sita Ram (2001(4) SCC 478) on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

3. The petitioner Board challenges in the present petition the award passed by the Labour Court, Ahmedabad at Annexure 'B' to the petition.

4. Even a casual perusal of the final order passed in the Award would indicate that in fact there cannot be any grievance raised by way of the present petition as to the legality or otherwise of the award which would be subject to scrutiny by this Court under Article 227.

5. It requires to be noted that the prayers made by the workmen before the Labour Court so far as reinstatement and also so far as backwages are concerned, have been rejected. Obviously, therefore, no grievance can be made by the petitioner-employer in this regard.

6. The next direction given in the final order is that the employer shall pay the employees the balance amount due to the employees which has remained unpaid out of the total dues quantified in Exh. 31. In this context, it is relevant to note that Exh. 31 is a letter addressed by the Executive Engineer of the petitioner to the concerned workman, setting out the amount due and payable, and forwarded to that workman. Exh. 31 therefore, is an admission on the part of the petitioner that the amount specified therein is due and payable to the concerned workman. When the Labour Court, in the final order issued a direction that the unpaid balance of

the admitted amount be paid to the concerned workman with 12% interest, this is unobjectionable.

7. A further direction given in the final order is that the employer shall also give the pensionary benefits to those workman who are entitled to such benefits. This direction is also unexceptionable, inasmuch as the Labour Court has not found on a question of fact as to which of the employees are entitled to pensionary benefits, and/or to what extent, neither has the Labour Court decided whether or not the workmen in the Reference are entitled to pensionary benefits in the first place. Thus the Labour Court has merely given a general direction to the employer, which amounts to saying that the employer shall determine firstly whether any of the concerned workman are entitled to pensionary benefits, and shall then determine the amount of such pensionary benefits, and only thereafter make payment of such amount to the concerned workman. Even this direction is unexceptionable inasmuch as this direction leaves it to the employer to decide both the principle of the application of pensionary benefits to the concerned workman, so also the quantum of such benefits.

8. The last direction objected to by the learned counsel for the petitioner is as regards costs awarded by the Labour Court quantified at Rs.1000/- per workman. In this context, I may only state that quantification of costs is not a matter where this Court would normally interfere, particularly in a petition under Article 227 of the Constitution, unless such figure is of such a magnitude which would shock the conscience of the Court. On the facts of the case, I find that there is no legal justification for interfering with this figure of costs quantified by the Labour Court.

9. Consequently, in the premises aforesaid, none of the prayers made in the present petition can be allowed. The petition is, therefore, rejected, and rule is discharged, with no orders as to costs.

Sd/-

(Y.B. BHATT, J.)

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